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August 7, 2014

VIA HAND DELIVERY

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Complaints Examination & Legal Administration
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FEDERAL ELECTION
COMMISSION
2014 AUG -7 PM 3:24
OFFICE OF GENERAL
COUNSEL

Re: MUR 6842/Frank Scaturro, Frank Scaturro for Congress, and Nancy Collier as treasurer of Frank Scaturro for Congress

Dear Mr. Jordan:

This response is submitted on behalf of Frank Scaturro, Frank Scaturro for Congress (the "Frank Scaturro Campaign"), and Nancy Collier as treasurer of Frank Scaturro for Congress (collectively, the "Respondents") in response to the complaint filed by Theresa Gaffney on June 9, 2014 alleging a supposed violation of the Federal Election Campaign Act ("FECA") and Federal Election Commission ("FEC" or the "Commission") regulations.

Ms. Gaffney's complaint appears to have been designed to simply harass the Respondents via the Commission's enforcement process. As set forth in greater detail below, her complaint is merely of a *de minimis* nature. Accordingly, the Respondents respectfully request that the Commission take no further action in this matter and dismiss Ms. Gaffney's frivolous allegations.

I. Allegations of Missing "Paid For" Disclaimers

Ms. Gaffney's June 9th complaint alleges a supposed violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11. FECA requires all public communications by a political committee to disclose who paid for and authorized the communication. See 2 U.S.C. § 411d(a); 11 C.F.R. § 110.11(a). This disclaimer requirement applies to all electioneering communications by any person. 11 C.F.R. § 110.11(a)(4). Communications paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents must clearly state that the communication was paid for by such authorized political committee. 2. U.S.C. § 441d(a)(1). In her June 9th complaint, Ms. Gaffney alleges that the Respondents "willfully" violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 by failing to provide a disclaimer on a photocopied hand-written letter.

Nevertheless, it was obvious to the recipients that the Respondents authorized and paid for the letter based on its content and the circumstances surrounding its dissemination.

The Commission has routinely and repeatedly held that the disclaimer requirement is met where it is clear to the public who is responsible for the particular communication. *See* General Counsel's Report, MUR 6270 (Paul) ("In similar matters involving incomplete or missing disclaimers, where there was sufficient information to identify the Committee payor, the Commission has exercised its prosecutorial discretion and dismissed the disclaimer violation allegations."); MUR 6438 (Art Robinson for Congress) ("[T]hey contained sufficient information for the recipients to identify the emails as authorized emails and to identify Robinson's campaign as the payor."); MUR 6027 (Dole) (holding that disclaimers were sufficient to "indicate that the public would not have been misled as to who paid for the advertisement"); MUR 5775R (Pryce) ("[I]t appears that viewers were apprised of the salient information."). Further, even in cases where the disclaimer requirement was clearly not met, the Commission has exercised its prosecutorial discretion to dismiss allegations for *de minimis* violations. *See* General Counsel's Report, MUR 6152 (Martin Manna) (dismissing a disclaimer violation for a \$740 mailing consisting of 1,500 letters).

On May 22, 2014, the Respondents spent approximately \$280 to mail 500 letters that did not include a disclaimer. The campaign was largely staffed by volunteers. One of those volunteers noticed the mistake the following day and it was quickly rectified. The Respondents spent approximately \$336 to mail 600 corrected letters in a second round of mailings on May 25. *See* Exhibit A. Frank Scaturro ran in the congressional primary election, was defeated, and is already facing over \$200,000 of campaign debt. *See* Quarterly Report of Receipts and Disbursements for Frank Scaturro for Congress (July 15, 2014). To the extent that a violation occurred, it was clearly *de minimis* in nature. Further, the letter in question aimed to rally public support for Frank Scaturro's campaign; incorporated the Frank Scaturro Campaign's logo in the letterhead; and invited constituents to vote for him in the upcoming primary. Given Ms. Gaffney's ability to file a complaint against the Respondents specifically, she demonstrated no difficulty in identifying that the letter in question was paid for and approved by the Respondents.

To the extent that any of the Respondents' letters failed to include a disclaimer, the Respondents rectified the situation after only a few days and did so before Ms. Gaffney's complaint was even filed. *See* Exhibit A.

II. Conclusion

For all of the reasons discussed above, the Commission should find that there is no reason to believe that Frank Scaturro, Frank Scaturro for Congress, and Nancy Collier as treasurer of Frank Scaturro for Congress, violated FECA or any FEC regulation in any meaningful or willful

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way, and the Commission should exercise its prosecutorial discretion and dismiss this matter promptly.

Sincerely,

Brett Hoyer

Brett G. Kappel

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EXHIBIT A



Dear Neighbor,

It was a pleasure visiting residents of Garden City at home last weekend in order to spread the word about the upcoming congressional June 24th Primary Election and to hear your concerns about the state of our country. Among specific issues, I most often heard concerns about the tax burden that has been driving residents out of Nassau County and the need to repeal Obamacare.

More generally, many of you indicated your frustration with the way politics has been conducted from the national to the local level. I've experienced the same frustration firsthand as I have run into obstacles from those who have a vested interest in keeping the status quo.

The solutions to our country's problems are within our grasp if we fight for true reform of a broken system that has left us with lingering unemployment and an unprecedented national debt. That is why I respectfully seek your vote on June 24th. We can leave a better country to future generations if we are willing to fight for it.

Thank you for your consideration and support!

- Frank Scaturro

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Paid for by Frank Scaturro for Congress